

IC 34-26-5

Chapter 5. Indiana Civil Protection Order Act

IC 34-26-5-1

Prevention of domestic and family violence

Sec. 1. This chapter shall be construed to promote the:

- (1) protection and safety of all victims of domestic or family violence in a fair, prompt, and effective manner; and
- (2) prevention of future domestic and family violence.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-2

Persons eligible to file petition for order of protection; petition on behalf of a child; prohibition on mutual orders; jurisdiction for order sought against a minor

Sec. 2. (a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a:

- (1) family or household member who commits an act of domestic or family violence; or
- (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the petitioner.

(b) A parent, a guardian, or another representative may file a petition for an order for protection on behalf of a child against a:

- (1) family or household member who commits an act of domestic or family violence; or
- (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the child.

(c) A court may issue only one (1) order for each respondent. If a petitioner files a petition against more than one (1) respondent, the court shall:

- (1) assign a new case number; and
- (2) maintain a separate court file;

for each respondent.

(d) If a petitioner seeks relief against an unemancipated minor, the case may originate in any court of record and, if it is an emergency matter, be processed the same as an ex parte petition. When a hearing is set, the matter may be transferred to a court with juvenile jurisdiction.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-3

Forms; clerical assistance; protective order depository

Sec. 3. (a) The division of state court administration shall:

- (1) develop and adopt:
 - (A) a petition for an order for protection;
 - (B) an order for protection, including:
 - (i) orders issued under this chapter;
 - (ii) ex parte orders;
 - (iii) no contact orders under IC 31 and IC 35; and

(iv) forms relating to workplace violence restraining orders under IC 34-26-6;

(C) a confidential form;

(D) a notice of modification or extension for an order for protection, a no contact order, or a workplace violence restraining order;

(E) a notice of termination for an order for protection, a no contact order, or a workplace violence restraining order; and

(F) any other uniform statewide forms necessary to maintain an accurate registry of orders; and

(2) provide the forms under subdivision (1) to the clerk of each court authorized to issue the orders.

(b) In addition to any other required information, a petition for an order for protection must contain a statement listing each civil or criminal action involving:

(1) either party; or

(2) a child of either party.

(c) The following statements must be printed in boldface type or in capital letters on an order for protection, a no contact order, or a workplace violence restraining order:

VIOLATION OF THIS ORDER IS PUNISHABLE BY CONFINEMENT IN JAIL, PRISON, AND/OR A FINE.

IF SO ORDERED BY THE COURT, THE RESPONDENT IS FORBIDDEN TO ENTER OR STAY AT THE PETITIONER'S RESIDENCE, EVEN IF INVITED TO DO SO BY THE PETITIONER OR ANY OTHER PERSON. IN NO EVENT IS THE ORDER FOR PROTECTION VOIDED.

PURSUANT TO 18 U.S.C. 2265, THIS ORDER FOR PROTECTION SHALL BE GIVEN FULL FAITH AND CREDIT IN ANY OTHER STATE OR TRIBAL LAND AND SHALL BE ENFORCED AS IF IT WERE AN ORDER ISSUED IN THAT STATE OR TRIBAL LAND. PURSUANT TO 18 U.S.C. 922(g), ONCE A RESPONDENT HAS RECEIVED NOTICE OF THIS ORDER AND AN OPPORTUNITY TO BE HEARD, IT IS A FEDERAL VIOLATION TO PURCHASE, RECEIVE, OR POSSESS A FIREARM WHILE SUBJECT TO THIS ORDER IF THE PROTECTED PERSON IS:

(A) THE RESPONDENT'S CURRENT OR FORMER SPOUSE;

(B) A CURRENT OR FORMER PERSON WITH WHOM THE RESPONDENT RESIDED WHILE IN AN INTIMATE RELATIONSHIP; OR

(C) A PERSON WITH WHOM THE RESPONDENT HAS A CHILD.

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES UNDER 18 U.S.C. 2261 AND 18 U.S.C. 2262.

(d) The clerk of the circuit court, or a person or entity designated by the clerk of the circuit court, shall provide to a person requesting

an order for protection:

- (1) the forms adopted under subsection (a);
- (2) all other forms required to petition for an order for protection, including forms:
 - (A) necessary for service; and
 - (B) required under IC 31-17-3; and
- (3) clerical assistance in reading or completing the forms and filing the petition.

Clerical assistance provided by the clerk or court personnel under this section does not constitute the practice of law. The clerk of the circuit court may enter into a contract with a person or another entity to provide this assistance. A person, other than a person or other entity with whom the clerk has entered into a contract to provide assistance, who in good faith performs the duties the person is required to perform under this subsection is not liable for civil damages that might otherwise be imposed on the person as a result of the performance of those duties unless the person commits an act or omission that amounts to gross negligence or willful and wanton misconduct.

(e) A petition for an order for protection must be:

- (1) verified or under oath under Trial Rule 11; and
- (2) issued on the forms adopted under subsection (a).

(f) If an order for protection is issued under this chapter, the clerk shall comply with IC 5-2-9.

As added by P.L.133-2002, SEC.56. Amended by P.L.39-2003, SEC.1; P.L.221-2003, SEC.8.

IC 34-26-5-4

Jurisdiction; venue; prohibition on minimum residency requirement

Sec. 4. (a) Any court of record has jurisdiction to issue a civil order for protection.

(b) A petition for an order for protection must be filed in the county in which the:

- (1) petitioner currently or temporarily resides;
- (2) respondent resides; or
- (3) domestic or family violence occurred.

(c) There is no minimum residency requirement to petition for an order for protection.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-5

Duty to inform court of other legal proceedings involving a party or child of a party

Sec. 5. At a hearing to obtain an order for protection, each party has a continuing duty to inform the court of:

- (1) each separate proceeding for an order for protection;
- (2) any civil litigation;
- (3) each proceeding in a family, domestic relations, or juvenile court; and

(4) each criminal case;
involving a party or a child of a party. The information provided under this section must include the case name, the case number, and the county and state in which the proceeding is held, if that information is known by the party.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-6

Rules

Sec. 6. The following rules apply to an order for protection issued under this chapter:

(1) An order for protection is in addition to, and not instead of, another available civil or criminal proceeding.

(2) A petitioner is not barred from seeking an order because of another pending proceeding.

(3) A court may not delay granting relief because of the existence of a pending action between the petitioner and respondent.

(4) If a person who petitions for an ex parte order for protection also has a pending case involving:

(A) the respondent; or

(B) a child of the petitioner and respondent;

the court that has been petitioned for relief shall immediately consider the ex parte petition and then transfer that matter to the court in which the other case is pending.

(5) If a person files a petition for an order of protection requesting relief that:

(A) does not require a hearing under sections 9(b) and 10(a) of this chapter; and

(B) requires a hearing under sections 9(c) and 10(b) of this chapter;

the court may issue an ex parte order for protection providing relief under clause (A) at any time before the required hearing under clause (B).

As added by P.L.133-2002, SEC.56. Amended by P.L.221-2003, SEC.9.

IC 34-26-5-7

Address confidentiality

Sec. 7. A petitioner may omit the petitioner's address from all nonconfidential documents filed with a court. However, a petitioner must provide the court with complete information concerning the protected address on the uniform statewide confidential form and on other confidential forms developed by the division of state court administration under section 3 of this chapter. A petitioner shall also provide the clerk with a public mailing address for purposes of serving pleadings, notices, and court orders. The petitioner may use the address confidentiality program under IC 5-26.5. If disclosure of a petitioner's address is necessary to determine jurisdiction or to consider venue, the court may order the disclosure to be made:

- (1) after receiving a petitioner's consent;
- (2) orally in the judge's chambers and out of the presence of a respondent with a sealed record made; or
- (3) after a hearing in which the court considers the safety of a petitioner and finds that disclosure of the address is in the interest of justice.

As added by P.L.133-2002, SEC.56. Amended by P.L.221-2003, SEC.10.

IC 34-26-5-8

Use of forms; transmission to clerk

Sec. 8. If a petitioner seeks:

- (1) an order for protection;
- (2) an extension of an order for protection;
- (3) a modification of an order for protection; or
- (4) the termination of an order for protection;

the petitioner is responsible for completing the forms prescribed by the division of state court administration and for transmitting those forms to the clerk of the court.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-9

Ex parte orders; relief after notice and hearing; duties of the issuing court; effective dates; burden of proof; superseding orders; presumptions

Sec. 9. (a) If it appears from a petition for an order for protection or from a petition to modify an order for protection that domestic or family violence has occurred or that a modification of an order for protection is required, a court may:

- (1) without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte; or
- (2) upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

(b) A court may grant the following relief without notice and hearing in an ex parte order for protection or in an ex parte order for protection modification:

- (1) Enjoin a respondent from threatening to commit or committing acts of domestic or family violence against a petitioner and each designated family or household member.
- (2) Prohibit a respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with a petitioner.
- (3) Remove and exclude a respondent from the residence of a petitioner, regardless of ownership of the residence.
- (4) Order a respondent to stay away from the residence, school, or place of employment of a petitioner or a specified place frequented by a petitioner and each designated family or household member.
- (5) Order possession and use of the residence, an automobile,

and other essential personal effects, regardless of the ownership of the residence, automobile, and essential personal effects. If possession is ordered under this subdivision, the court may direct a law enforcement officer to accompany a petitioner to the residence of the parties to:

(A) ensure that a petitioner is safely restored to possession of the residence, automobile, and other essential personal effects; or

(B) supervise a petitioner's or respondent's removal of personal belongings.

(6) Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household member.

(c) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

(1) Grant the relief under subsection (b).

(2) Specify arrangements for visitation of a minor child by a respondent and:

(A) require supervision by a third party; or

(B) deny visitation;

if necessary to protect the safety of a petitioner or child.

(3) Order a respondent to:

(A) pay attorney's fees;

(B) pay rent or make payment on a mortgage on a petitioner's residence;

(C) if the respondent is found to have a duty of support, pay for the support of a petitioner and each minor child;

(D) reimburse a petitioner or other person for expenses related to the domestic or family violence, including:

(i) medical expenses;

(ii) counseling;

(iii) shelter; and

(iv) repair or replacement of damaged property; or

(E) pay the costs and fees incurred by a petitioner in bringing the action.

(4) Prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon specified by the court, and direct the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the order for protection unless another date is ordered by the court.

An order issued under subdivision (4) does not apply to a person who is exempt under 18 U.S.C. 925.

(d) The court shall:

(1) cause the order for protection to be delivered to the county sheriff for service;

(2) make reasonable efforts to ensure that the order for protection is understood by a petitioner and a respondent if present;

(3) transmit, by the end of the same business day on which the order for protection is issued, a copy of the order for protection to each local law enforcement agency designated by a petitioner;

(4) transmit a copy of the order to the clerk for processing under IC 5-2-9; and

(5) notify the state police department of the order if the order and the parties meet the criteria under 18 U.S.C. 922(g)(8).

(e) An order for protection issued ex parte or upon notice and a hearing, or a modification of an order for protection issued ex parte or upon notice and a hearing, is effective for two (2) years after the date of issuance unless another date is ordered by the court. The sheriff of each county shall provide expedited service for an order for protection.

(f) A finding that domestic or family violence has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence. The relief may include an order directing a respondent to surrender to a law enforcement officer or agency all firearms, ammunition, and deadly weapons:

(1) in the control, ownership, or possession of a respondent; or

(2) in the control or possession of another person on behalf of a respondent;

for the duration of the order for protection unless another date is ordered by the court.

(g) An order for custody, visitation, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.

(h) The fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-10

Hearing after ex parte order

Sec. 10. (a) Except as provided in subsection (b), if a court issues:

(1) an order for protection ex parte; or

(2) a modification of an order for protection ex parte;

and provides relief under section 9(b) of this chapter, upon a request by either party not more than thirty (30) days after service of the order or modification, the court shall set a date for a hearing on the petition. The hearing must be held not more than thirty (30) days after the request for a hearing is filed unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing.

(b) A court shall set a date for a hearing on the petition not more

than thirty (30) days after the filing of the petition if a court issues an order for protection ex parte or a modification of an order of protection ex parte and:

- (1) a petitioner requests or the court provides relief under section 9(b)(3), 9(b)(5), or 9(b)(6) of this chapter; or
- (2) a petitioner requests relief under section 9(c)(2), 9(c)(3), or 9(c)(4) of this chapter.

The hearing must be given precedence over all matters pending in the court except older matters of the same character.

(c) In a hearing under subsection (a) or (b):

- (1) relief under section 9 of this chapter is available; and
- (2) if a respondent seeks relief concerning an issue not raised by a petitioner, the court may continue the hearing at the petitioner's request.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-11

Exclusion from residence not waived by invitation from petitioner

Sec. 11. If a respondent is excluded from the residence of a petitioner or ordered to stay away from a petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-12

Dismissal

Sec. 12. If a petitioner:

- (1) files a written request for dismissal with a court; or
- (2) makes an oral request on the record to dismiss the case in open court;

the court shall without delay or any conditions dismiss the case without prejudice.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-13

Lapse of time between act and filing of petition

Sec. 13. A court may not deny a petitioner relief under section 9 of this chapter solely because of a lapse of time between an act of domestic or family violence and the filing of a petition.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-14

Prohibition on mutual orders

Sec. 14. (a) A court may not grant a mutual order for protection to opposing parties.

(b) If both parties allege injury, the parties shall do so by separate petitions. The trial court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on the petition's individual merits. If the trial court finds cause to grant both petitions, the court shall do so by separate orders with

specific findings justifying the issuance of each order.
As added by P.L.133-2002, SEC.56.

IC 34-26-5-15

Prohibition on mediation

Sec. 15. A court may not:

- (1) order parties into mediation; or
- (2) refer parties to mediation;

for resolution of the issues in a petition for an order for protection regarding family or domestic violence. This section may not be construed to preclude mediation in other cases involving the same parties.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-16

Fees

Sec. 16. Fees for:

- (1) filing;
- (2) service of process;
- (3) witnesses; or
- (4) subpoenas;

may not be charged for a proceeding seeking relief or enforcement as provided in this chapter. This section may not be construed to prevent the collecting of costs from a party against whom an order for protection is sought if the court finds a claim to be meritorious and issues an order for protection under this chapter.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-17

Validity of foreign protection orders; full faith and credit; enforcement; duties of law enforcement officers

Sec. 17. (a) A foreign protection order is facially valid if it:

- (1) identifies the protected person and the respondent;
- (2) is currently in effect;
- (3) was issued by a state or tribal court with jurisdiction over the:
 - (A) parties; and
 - (B) subject matter;

under the law of the issuing state or Indian tribe; and

- (4) was issued after a respondent was given reasonable notice and an opportunity to be heard sufficient to protect the respondent's right to due process. In the case of an ex parte order, notice and opportunity to be heard must be provided within the time required by state or tribal law and within a reasonable time after the order is issued sufficient to protect the respondent's due process rights.

(b) A facially valid foreign protection order is prima facie evidence of its validity. The protection order may be inscribed on a tangible medium or stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of an

order for protection is not required for enforcement.

(c) Except as provided in subsection (d), a protection order that is facially valid and issued by a court of a state (issuing state) or Indian tribe shall be accorded full faith and credit by Indiana courts.

(d) A mutual foreign protection order is not entitled to full faith and credit if the order is issued by a state or tribal court against a person who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against a family or household member, unless:

- (1) a separate petition or motion was filed by a respondent;
- (2) the issuing court has reviewed each motion separately and granted or denied each on its individual merits; and
- (3) separate orders were issued and the issuing court made specific findings that each party was entitled to an order.

(e) Registration or filing of a foreign protection order is not a prerequisite to enforcement of the order in Indiana, and a protection order that is consistent with this section shall be accorded full faith and credit notwithstanding a failure to register or file the order in Indiana. However, if a petitioner wishes to register a foreign protection order in Indiana, all Indiana courts of record shall accommodate the request. The division of state court administration shall develop a form to be used by courts, clerks, and law enforcement agencies when a petitioner makes a request to register a foreign protection order. The courts, clerks of the courts, and sheriffs or law enforcement agencies maintaining depositories shall employ the same procedures required under IC 5-2-9-6 for entering, modifying, extending, or terminating a foreign protection order as those used for a protection order and a no contact order originating in Indiana.

(f) A facially valid foreign protection order shall be enforced by a law enforcement officer and a state court as if it were an order originating in Indiana. The order must be enforced if the foreign protection order contains relief that the state courts lack the power to provide in an order for protection issued in Indiana.

(g) An Indiana law enforcement officer:

- (1) may not require notification, registration, or filing of a facially valid foreign order for protection as a prerequisite to enforcement of an order;
- (2) if a foreign protection order is not presented, may consider other information to determine under a totality of the circumstances whether there is probable cause to believe that a valid foreign order for protection exists; and
- (3) who determines that an otherwise valid foreign protection order cannot be enforced because a respondent has not been notified or served with the order, shall:
 - (A) inform the respondent of the order;
 - (B) serve the order on the respondent;
 - (C) ensure that the order and service of the order are entered into the state depository;
 - (D) allow the respondent a reasonable opportunity to comply

with the order before enforcing the order; and
(E) ensure the safety of the protected person while giving the respondent the opportunity to comply with the order.

As added by P.L.133-2002, SEC.56.

IC 34-26-5-18

Orders entered into Indiana data and communication system (IDACS)

Sec. 18. The following orders are required to be entered into the Indiana data and communication system (IDACS) by a county sheriff or local law enforcement agency:

- (1) A no contact order issued under IC 31-32-13 in a juvenile case.
- (2) A no contact order issued under IC 31-34-20 in a child in need of services (CHINS) case.
- (3) A no contact order issued under IC 31-34-25 in a CHINS case.
- (4) A no contact order issued under IC 31-37-19 in a delinquency case.
- (5) A no contact order issued under IC 31-37-25 in a delinquency case.
- (6) A no contact order issued under IC 33-39-1-8 in a criminal case.
- (7) An order for protection issued under this chapter.
- (8) A workplace violence restraining order issued under IC 34-26-6.
- (9) A no contact order issued under IC 35-33-8-3.2 in a criminal case.
- (10) A no contact order issued under IC 35-38-2-2.3 in a criminal case.

As added by P.L.133-2002, SEC.56. Amended by P.L.98-2004, SEC.121.

IC 34-26-5-19

Guardian ad litem

Sec. 19. In a proceeding under this chapter, a court may appoint a guardian ad litem to represent the interests of a child of one (1) or both parents.

As added by P.L.133-2002, SEC.56.